



BROOKLYN OFFICE

U.S. Department of Justice

Antitrust Division

Liberty Square Building  
450 Fifth Street NW  
Washington, DC 20530

February 7, 2011

Via ECF

Honorable Nicholas G. Garaufis  
U.S. District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Honorable Ramon E. Reyes, Jr.  
U.S. District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: *United States, et al. v. American Express Company, et al.*, Case No. 10-cv-04496-NGG-RER;

*Rite Aid Corp., et al. v. American Express Travel Related Services Company, Inc., et al.*, Lead Case No. 08-cv-2315-NGG-RER

Dear Judge Garaufis and Judge Reyes:

The parties to *United States, et al. v. American Express Company, et al.*, Case No. 10-cv-04496-NGG-RER (the "Government Action") and *Rite Aid Corp., et al. v. American Express Travel Related Services Company, Inc., et al.*, Lead Case No. 08-cv-2315-NGG-RER (the "Individual Merchant Actions") jointly submit this status report on scheduling and coordination.

At the Status Conference on December 9, 2010, the Court ordered the parties in the Government Action and the Individual Merchant Actions to report in 60 days on proposed schedules and on any recommendations on coordination. The parties have been engaged in negotiations on these topics which are still under way. There are some significant areas of disagreement that remain. The parties would like to continue these discussions in the hope of reaching final agreement where possible, and to narrow the issues of disagreement that will

require judicial attention.

Additionally, the parties would like to report that the Judicial Panel on Multidistrict Litigation held a hearing on January 27, 2011, on Plymouth Oil's motion to transfer and centralize various private cases against American Express before this Court as MDL 2221. The Panel has not yet issued its ruling, but the parties expect an order to be issued soon. In anticipation of a possible MDL before this Court, the parties' negotiations have included counsel from the putative class actions filed by merchants against American Express in the Southern District of New York, *In re American Express Anti-Steering Rules Antitrust Litigation*, Cases No. 06-cv-2974, 10-cv-5200, 10-cv-5369, and 10-cv-0790.

The parties respectfully and jointly propose that on Tuesday, February 15, 2011, the parties will file either (1) a joint agreed submission on scheduling and coordination, or (2) separate letter briefs, no longer than 8 pages for the plaintiffs collectively, on the one hand, and American Express, on the other hand, stating each party's position on disputed issues for the Court's consideration. The parties will be prepared to appear for a hearing to discuss these issues at any date thereafter convenient for the Court.

Respectfully submitted,

/s

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Application granted.  
So. ordered.  
s/NGG  
2/8/11

/s

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cc: *Via ECF* to All Counsel

cc: *Via Electronic Mail* to

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